

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 352
3312060

BETWEEN TONY BOYD
 Applicant

AND MAUI WARD
 Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
 No appearance for the Respondent

Investigation Meeting: 14 April 2025 in Nelson

Further Information
Received: 14 April 2025 from the Applicant

Date of Determination: 18 June 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tony Boyd worked for Maui Ward as driver delivering online grocery orders for Countdown.

[2] On 21 June 2024 Mr Ward advised Mr Boyd that he could no longer work for him. This was because Countdown would not allow him on site as he had not undertaken a drug test that Countdown had requested two months earlier.

[3] Mr Boyd raised a personal grievance for unjustified dismissal. Mr Boyd and Mr Ward were unable to resolve the personal grievance. Mr Boyd lodged a statement of problem in the Authority seeking remedies for unjustified dismissal.

Progress of this matter

[4] The statement of problem was served on Mr Ward. On 29 July 2024 Mr Ward responded to the Authority stating “I basically disagree with the assertions made in the statement that was sent to me ... I hope to be able to write a full statement this week.” Nothing further was received from Mr Ward.

[5] Mr Ward was then notified of the case management conference that the Authority scheduled to progress this matter. Mr Ward did not attend the case management conference.

[6] In the case management conference, I set this matter down for an investigation meeting and Mr Ward was subsequently served with a notice of investigation meeting which set out the date and time for the investigation meeting. Mr Ward did not attend the investigation meeting.

[7] I am satisfied that Mr Ward was aware of the date and time of the investigation meeting, and he should have attended but he chose not to. And, he did not contact the Authority to explain why he could not or would not attend.

[8] I note that the notice of investigation meeting advised Mr Ward that if he chose not to participate in the investigation meeting then the claim would be determined in its absence. So, Mr Ward was aware that I would proceed if he did not participate in the investigation meeting.

[9] Considering all the above, there was no apparent reason why the investigation meeting could not continue without Mr Ward. I therefore proceeded with the investigation meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

The Authority’s investigation

[10] I investigated Mr Boyd’s claim by receiving written evidence and documents from him and holding an investigation meeting on 14 April 2025. In my investigation meeting, under affirmation, Mr Boyd confirmed his written statement and gave oral evidence in answer to questions from myself.

[11] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law,

then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Unjustifiable dismissal

What happened?

[12] Mr Ward had a contract with a Countdown store in Nelson (now Woolworths) to deliver online grocery orders. Mr Ward employed Mr Boyd as a driver to deliver the online grocery orders. Mr Boyd started working for Mr Ward on 1 July 2022.

[13] Mr Boyd did not receive an employment agreement, and his work proceeded on the basis of an oral agreement with Mr Ward.

[14] Initially Mr Ward worked five days per week doing deliveries in three blocks per day for a total of nine hours each day. Mr Ward was paid \$23.50 per hour on a weekly basis.

[15] Mr Ward's hours of work and rate of pay changed during his employment and by the end he was working four days per week, nine hours per day, paid at \$26.00 per hour.

[16] In April 2024 Mr Ward told Mr Boyd that he would need to take a drug test at Countdown's request. Mr Boyd refused – I note here that there was no basis on which Mr Ward could require Mr Boyd to take a drug test as there was no employment agreement nor any policy relating to drugs and alcohol.

[17] It appears that Mr Ward was not concerned about Mr Boyd's refusal to take a drug test – he did not follow up with Mr Boyd about it and Mr Boyd continued to work in the usual way.

[18] On 21 June 2024 when Mr Boyd started work, he found a letter from Mr Ward in the delivery truck. This letter stated that Mr Boyd could no longer work doing Countdown deliveries as Countdown would not allow him on its premises as he had not taken the drug test as previously requested. Mr Ward then followed up with a text message to Mr Boyd confirming that 21 June was to be his last day of work.

[19] Mr Boyd finished work on 21 June 2024.

Analysis

[20] Mr Boyd was dismissed by Mr Ward on 21 June 2024, by the letter and text message on that day.

[21] In a claim for unjustified dismissal, once it is established that the employee has been dismissed the employer must prove that the dismissal was justified.

[22] The test for justification is set out in s 103A of the Act; the test being whether the actions of the employer were what a fair and reasonable employer could have done in all of the circumstances.

[23] Justification is assessed in two parts. First, whether the employer carried out a fair process in coming to the decision to dismiss and second, whether the decision to dismiss was substantively justified.

[24] In terms of process, a fair process is governed by s 4(1A) and s 103A of the Act. Based on these sections, in order to carry out a fair process when dismissing Mr Boyd, Mr Ward needed to:

- (a) Properly investigate the concerns about why Countdown would not allow Mr Boyd on its premises, including what might be done about it and what this would mean for Mr Boyd's ongoing employment.
- (b) Clearly outline the concerns arising with Countdown's refusal to allow Mr Boyd on site to Mr Boyd for him to respond. And outline the implications for Mr Boyd's employment if he could not attend at the Countdown site.
- (c) Then give Mr Boyd a reasonable opportunity to respond to the information and the concerns before he made his decision to dismiss.
- (d) Finally, consider any explanations given by Mr Boyd before he decided to dismiss him.

[25] The simple point here is a full process would have enabled Mr Ward and Mr Boyd to understand what Countdown required and this in turn would have given Mr Boyd an opportunity to respond; it may have been possible that some action or compromise could have been undertaken and Mr Boyd's job could have been retained.

[26] It is clear from the facts established that Mr Ward did not carry out a fair process. It also follows that as the process was so flawed there was no basis to decide that dismissal was appropriate.

[27] Therefore, dismissal was unjustified both from a procedural and substantive point.

Remedies

[28] As Mr Boyd has been successful with his unjustified dismissal claim I must turn to consider what remedies he may be entitled to; I may award any of the remedies provided for under s 123 of the Act.

Compensation

[29] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers. An award is made pursuant to s 123(1)(c)(i) of the Act.

[30] In assessing the level of any compensation to be awarded I need to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out of Mr Boyd's dismissals; recent decisions of the Employment Court provide guidance on this exercise of quantification.¹

[31] Mr Boyd's evidence was that a result of his dismissal, he:

(a) Was shocked and disappointed.

(b) Had significant financial problems which caused stress and anxiety.

[32] It was also clear from Mr Boyd's evidence that the loss of his employment had a significant impact on his self-worth.

[33] Based on this evidence I quantify Mr Boyd's loss and therefore compensation to be \$15,000.

¹ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

Reimbursement

[34] As Mr Boyd has a personal grievance if he has lost remuneration as a result of their grievance then pursuant to sections 123 and 128 of the Act, he may be entitled to that lost remuneration.

[35] In the circumstances I am satisfied that Mr Boyd should be paid three months' ordinary time remuneration. This is 13 weeks' pay consisting of 36 hours per week at a wage rate of \$26.00 per hour. I calculate this to be \$12,168 (gross).

Contribution

[36] As I have awarded remedies to Mr Boyd, I must now consider whether he contributed to the situation that gave rise to their grievance.² This assessment requires me to determine if he behaved in a manner that was culpable or blameworthy, and this behaviour contributed to his grievance.³

[37] I am satisfied that Mr Boyd did not behave in a manner that contributed to his personal grievance and no reduction in his remedies is required.

Summary

[38] Mr Ward unjustifiably dismissed Mr Boyd. In settlement of this grievance Mr Ward must pay Mr Boyd:

(a) \$15,000.00 (without any deductions) for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

(b) \$12,168 (gross) for lost remuneration pursuant to s 123(1)(b) of the Employment Relations Act 2000.

Costs

[39] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[40] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Boyd may lodge, and then should serve, a memorandum on costs

² Section 124 of the Act.

³ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

within 28 days of the date of this determination. From the date of service of that memorandum Mr Ward will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[41] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁴

Peter van Keulen
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1